XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.58/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Criminal Appeal No. 58/2001

APPELLANT Babulal Sahu, S/o. Shri Ram Sahu, aged about 30 years, R/o. Village Bakma, P.S. Bagbahra, Tah. & Distt. Mahasamund (C.G.)

Versus

RESPONDENT State of Chhattisgarh, through P.S. Bagbahra, Tahsil & Distt. Mahasamund (C.G.)

D.B. : Hon'ble Shri L.C. Bhadoo and Hon'ble Shri Dhirendra Mishra, JJ.

15-6-2007

Shri Awadh Tripathi, Advocate, for the appellant.

Shri Akhil Mishra, Panel Lawyer, for the respondent/State.

Arguments heard.

Oral judgment dictated on *Dais*.

ORAL JUDGMENT

Per L.C.Bhadoo, J. :

This appeal is directed against the judgment of conviction and order of sentence dated 15-11-2000 passed by 2nd Addl. Sessions Judge, Mahasamund in S.T. No. 143/2000, whereby the learned Addl. Sessions Judge after holding accused/appellant guilty for commission of offence under Section 302 of the Indian Penal Code, for committing murder of his wife Basanti Bai, sentenced him to undergo imprisonment for life, to pay a fine of Rs. 1000/-, and in default of payment of fine, to further undergo one year's imprisonment.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

The case of the prosecution, in brief, is that on 4-1-2000 at about 12.30 noon, Vaidyanath lodged report Ex. P-1 in Police Station Bagbahra to the effect that at about 8 a.m., Yadram came and informed him that his aunt Basanti Bai aged 25 years has died. On this Panchas were summoned, they saw that the body of Basanti Bai was lying on the ground. Kujuram, Tulsiram and Kamal etc. were present there. They saw that there were injuries below the knee of both the legs, there were injuries on the knee and neck also. After receiving the report, Investigating Officer left for the scene of occurrence, after giving notice to the Panchas, prepared inquest vide Ex. P-4 on the body of Basanti Bai. Body of Basanti Bai was sent for post mortem examination to the Community Health Centre, Bagbahra under Ex. P-13 where Dr. B.P. Malani (P.W. 17) conducted post mortem and opined that the cause of death of Basanti Bai was ausphyxia due to strangulation and throttling. The death is homicidal in nature. His report is Ex. P-12. Petticoat, Sari and Blouse of Basanti Bai were seized and two slides of vaginal swab were taken. Underwear and Lungi of accused were also seized and same were sent for chemical examination to Forensic Science Laboratory, Raipur, from where report was received. As per report, spots of human semen were found on the petticoat and sari of the deceased Basanti and underwear of the accused as well as on the slides of vaginal swab of the deceased. After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Mahasamund, who in turn

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

committed the case to the Sessions Judge, Raipur from where the learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused, examined 17 witnesses. Statement of accused was recorded under Section 313 of Cr.P.C. in which he denied the material appearing against him and stated that he is innocent. He has been falsely implicated in the crime in question and witnesses have deposed against him on account of land dispute with him. The learned trial Court after hearing the counsel for respective parties, convicted and sentenced the accused-appellant as aforementioned.

We have heard Shri Tripathi on behalf of the appellant and Shri Akhik Mishra, Panel Lawyer on behalf of the State.

Shri Awadh Tripathi has not disputed homicidal death of Basanti Bai. Moreover, Dr. B.P. Malani (P.W. 17) has stated that on 5-1-2000, on the request of Police Station Bagbahra, he conducted autopsy on the body of Basanti Bai and noticed that there was swelling on neck in size of 3 ½ cm area, face became blackish, in middle and right side of neck, there were three marks of fingures which were 7 cm in length and 1 cm in width, 8 cm in length and 1 cm in width and 6 cm in length and 1 ½ cm in width. There was swelling on the middle portion of neck. There was a mark in size of ½ cm x ½ cm on right side of thyroid cartilage, there was abrasion on the jaw, there were marks of fungures on the left side of neck,

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there were injuries on the knee. Injuries No. 1 and 7 impressions of fingers were on the wind pipe which were dangerous in nature and were fatal to life. On dissection of middle part of neck, where marks of fingers were seen on the wind pipe, clotted blood was present, musceis and vasseis were ruptured, there was clotted blood in the wind pipe, cause of death of Basanti Bai was due to ausphyxia on account of throttling and death was homicidal in nature. The above medical opinion is corroborated by evidence of P.W. 15 Sekh Gulam Sarwar, before whom the accused made extra judicial confession that on account of dispute with his wife as his wife did not allow him to have intercourse with her, when he tried to have intercourse forcibly, the dispute took place between the two, he pressed the neck of his wife. Therefore, in view of medical and circumstantial evidence, it is established that the death of Basanti Bai was homicidal in nature.

As far as involvement of the accused in commission of murder of his wife Basanti Bai is concerned, there is no direct or ocular evidence in this matter. The case rests on the circumstancial evidence bassed on following circumstances:-

i. That, the accused made extra judicial confession before P.W. 15 Shekh Gulam Sarvar;

ii. That false explanation was given by the accused;

iii. That, relation between the accused and the deceased was not cordial;

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

iv. That dead body of Basanti Bai was found in the house of the accused and he has not offered any explanation regarding cause of death of his wife Basanti Bai;

v. Injuries were found on the person of the accused; and

vi. Human semen was found on the clothes of the deceased and vaginal slides of the deceased.

As far as first circumstance i.e. accused made extra judicial confession before P.W. 15 Shekh Gulam Sarvar, is concerned, P.W. 15 Shekh Gulam Sarvar has stated that he was Sarpanch of the village. On the date of incident at about 10 a.m., Babulal came to his house and disclosed that he wanted to have sexual intercourse with his wife for which she did not agree, in the circumstances, he tried to have forcible intercourse with his wife, on account of that, some dispute took place between the two and during the dispute, by pressing the neck, he committed murder of his wife. Therefore, he should save him. On the same day, at about 3 – 4 p.m. police came to village. In cross-examination, the defence has not been able to elicit anything which discredits the evidence of this witness with regard to the extra judicial confession made by the accused before this witness nor anything has been brought on record in the cross-examination that the extra judicial confession was not voluntary. Shekh Gulam Sarvar (P.W.15) is Surpanch of the village and is an independent witness. There was no reason for him to implicate the accused in a false case. Therefore, the evidence of Shekh Gulam Sarvar with regard to extra judicial confession made

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by accused before him inspires confidence. The extra judicial confession was voluntary and as far as its truthfulness is concerned, the medical evidence corroborates the incident becase the accused was examined by P.W. 17 Dr. B.P. Malani. As per his evidence, as many as 9 simple injuries were noticed on the body of accused, and most of them were in nature of abration. Apart from that, body of the deceased Basanti was found in the house and no explanation has been offered by the accused. Even when the villagers including P.W. 1 Bednath reached to the house, the accused was present in the house, moreover, P.W. 3 Fekan Bai along with whom the deceased went to attend the call of nature same day morning, has stated that she disclosed to her just before the incident that the accused is in the habit of quarelling with her and give beating to her, he has relations with his sister-in-law namely Raimun Bai, so the above circumstances corroborate the extra judicial confession made by the accused before this witness.

So far as false explanation offered by the accused, as per the medical evidence of Dr. B.P. Malani (P.W. 17), Basanti Bai died on account of pressing of the neck as there was number of injuries on the person of Basanti Bai whereas the accused on enquiry by P.W. 1 Bednath as to how Basanti Bai had died, explained that there was pain in the chest of Basanti Bai, therefore, he gave a tablet to her and after swallowing tablet, she died. Similar is the evidence of P.W. 6 Kejuram, who has stated that on enquiry, Babulal disclosed that Basanti has died on account of heart attack. P.W. 7 Anandi

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आदेश पत्रक (पूर्वानुबद्ध)

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has stated that on enquiry the accused disclosed that as some pain developed in the chest of Basanti Bai, therefore she took one tablet, thereafter she became unconscious. P.W. 8 Tulsiram has also stated that Babulal on enquiry disclosed that Basanti Bai complained regarding pain in the chest, therefore, one tablet was given to her, thereafter Basanti Bai went for sleep and died. All these explanations offered by the accused to these witnesses on the face to it were false for the reason that as per the evidence of P.W. 17 Dr. B.P. Malani, Basanti Bai died on account of ausphyxia due to pressing of neck. Therefore, the circumstance of giving false explanation by the accused to the witnesses indicates that the accused was involved in the crime.

As the dead body was found in the house of the accused when the witnesses came and the accused was present in the house, moreover in the previous night, when the accused and the deceased were in the house, the deceased being frightening by the behaviour of the accused, requested P.W. 14 Aasmukhi , mother of the accused to remain in the house in the night and to sleep in their house so that the accused is not able to harass the deceased, which has been proved by P.W. 14 Aasmukhi, who has stated that on the request of daughter-in-law, she slept in the night in the house of the accused along with Basanti Bai on a cot and in the morning, she left, thereafter within a short time, the deceased sustained injuried and she died, there were injuries on the body of the accused and the accused has not offered any explanation

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आदेश पत्रक (पूर्वानुबद्ध)

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regarding the injuries sustained by him and deceased, therefore, presence of the accused is established in the house and he has not explained as to how Basanti Bai sustained injuries. As per provisions of Section 106 of the Indian Evidence Act, the above circumstance being within the special knowledge of the accused, the accused was liable to explain the circumstances in which Basanti Bai was met with death, therefore, that is an additional circumstance against the accused.

As far as conduct of the accused is concerned, P.W. 2 Kamalrai has stated that on account of the quarrel by the accused, earlier two wives of the accused left the house of the accused and Basanti Bai was third wife. Basanti Bai used to go to her parental house at Kusami, she returned to her in-law's house 1 ½ month before her death. Relations of the accused with Basanti Bai were not cordial, this fact was disclosed to him by sister-in-law of the accsed namely Fekan Bai, 3-4 months before the date of incident, a meeting was convened in the village by the mother-in-law of the accused, in which the mother-in-law of the accused disclosed that the accused is not providing food to Basanti Bai and he is in the habit of giving Marpeet to Basanti Bai, on which the accused was advised not to indulge in such activities, he assured that he will not beat Basanti Bai. This witness has not been cross-examined on this aspect. Even P.W. 3 Fekan Bai- sister-in-law has stated that the another sister-in-law namely Raimun Bai used to reside with her husband in a separate room, the deceased was third wife of the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

accused, the accused had earlier deserted his two wives after quarrelling with them. She has further stated that in the morning of the fateful day, the deceased disclosed to her that as today Raimun Bai is not there, that is why, the accused came near to her to have sexual intercourse, whenever her sister-in-law Raimun Bai remains in the house, the accused loves his sister-in-law. From the above evidence, it is established that the accused used to beat his wife, that is why, earlier two wives left the house of the accused and the deceased was third wife with whom the accused used to quarrel and give beating. On account of the relation of the accused with Raimun Bai there used to be quarrel between the deceased and the accused that is why, the deceased left the house of the accused and went to parental house at Kusami, thereafter a meeting of villagers was convened by mother of Basanti Bai, in that meeting, villagers advised the accused not to indulge in such activities, upon which the accused assured and Basanti Bai came and started living with the accused 1½ month before the incident. P.W. 13 Dheerbai has also stated that the accused used to give beating to Basanti Bai because he was having illicit relations with his sister-in-law and that is why Basanti Bai left the house and a meeting of the villagers was convened. In cross-examination, she has categorically stated that the accused was having illicit relations with his sister-in-law Raimun Bai and that is why, a meeting of villagers was convened, in that meeting, the accused was persuaded and therefore Basanti Bai started living with the

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

accused. Therefore, it is established that the relations of the accused and the deceased were not cordial on account of the conduct of the accused.

As per the evidence of P.W. 17 Dr. B.P. Malani, who conducted post mortem on the body of Basanti Bai as well as who examined the accused, he noticed 9 abrasions on the person of accused and that has not been explained by the accused therefore, this circumstance is suggestive of fact that the accused was involved in committing murder of Basanti Bai and that is why, he suffered injuries in the same scuffle.

As per the evidence of Investigating Officer, the clothes of the deceased i.e. one Petticoat and one Sari of the deceased and Chaddi of the accused were seized during investigation and same were sent to Forensic Science Laboratory, Raipur for chemical examination. As per F.S.L. report, spots of semen were found on the Petticoat and Sari of the deceased as well as on Chaddi of the accused. Therefore, this F.S.L. report also corroborates the fact that the accused had forcible intercourse with his wife Basanti Bai which was resisted by Basanti Bai and in that process, the accused throttled Basanti Bai. The cumulative effect of all the above circumstantial evidence leave no room of doubt regarding involvement of the accused in commission of the crime and from the above circumstantial evidence, the only irrestible inference can be drawn is that the accused was the author of the crime in question.

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Shri Awadh Tripathi, learned counsel for the appellant, argued that being legally wedded wife of the accused, he wanted to have sexual intercourse with Basanti Bai, when Basanti Bai refused to accede the request, he tried to have forcible intercourse with his wife and in that process, the accused sustained abrasion injuries and when the resistence was put by Basanti Bai, the accused in a heat of passion all of a sudden pressed the neck of his wife without having any intention to cause death of his wife therefore offence against accused doesnot travel beyond Section 304-II of IPC.

On the other hand, learned counsel for the State supports the judgment of the trial Court.

In support of his argument, Shri Awadh Tripathi relied on the decision of the Bombay High Court in the matter of ***Ghansham –v- State of Maharashtra*** reported in ***1996 Cri. L. J. 27***. The facts of the case were that on the fateful night when the accused and his wife were sleeping in the house with grown up children, the accused had urged for sexual intercourse with his wife Shakuntaladevi. As the grown up children were sleeping in the room, she did not allow the accused to have sexual intercourse with her. The accused appellant took out a *Gupti* and inflicted injury on her chest, as a result of which she died in the morning. The High Court on the above facts, held that the act done by the accused was out of sheer frustration, momentary impulse and anger and the accused had no intention to casue death, therefore,

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the act of the accused is culpable homicide not amounting to murder.

In order to reach to the conclusion whether the act of the accused comes within the exception and is not amounting to murder or the act of the accused is amounting to murder, the Court is required to decide from the facts and circumstances of each case that the accused acted with intention to cause death and the accused had knowledge that the injuries inflicted by the accused is so severe that in all probability, he is likely to cause death of the victim, then the act of the accused amounts to come within the definition of murder. In ***Virsa Singh Vs. State of Punjab*** reported in ***AIR 1958 SC 465*** the Apex Court held that the prosecution must prove the following facts before it can bring a case under Section 300 of the IPC

(i) first it must establish, quite objectively, that a bodily injury is present;

(ii) the nature of the injury must be proved;

(iii) it must be proved that there was an intention to inflict that particular bodily injury that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceed further;

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(iv) it must be proved that the injury of the type, just described, made up of the three elements set out above, was sufficient to cause death in the ordinary course of nature.

In the present case, the material evidence has been discussed in the earlier part of this judgment. The accused is a person of quarrelsome nature. On account of his behaviour and beating given by him, his earlier two wives left the house of the accused. As per the evidence of the prosecution, the accused was having illicit relation with his sister-in-law Raimun Bai, Basanti used to object the same, therefore, there used to be quarrel between the two and that is why Basanti Bai left the house, thereafter a meeting of villagers was convened by mother of the deceased in which the accused was advised not to indulge in the unwarranted activities and on assurance given by the accused, Basanti Bai came from her maternal house and started living with the accused 1 ½ month before the incident, even then the accused used to have illicit relation with his sister-in-law Raimun Bai which was not liked by Basanti Bai, on the fateful day, when Raimun Bai was not in the house, Basanti Bai did not allow the accused to have intercourse with her and the accused wanted to have intercourse with Basanti Bai which was resisted by her on the ground that whenever Raimun Bai remains in the house, he always have relation with her, when Basanti resisted the act of the accused, the accused had a forceful intercourse with Basanti Bai

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

when Basanti Bai was resisting, the accused sustained as many as 9 abrasion injuries, even then he did not stop and pressed neck of Basanti Bai, as a result of which she died spontaneously. Dr. B.P. Malani (P.W. 17) has stated that as many as 14 injuries were on various parts of body of Basanti out of those, injuries No. 1 and 7 were on the neck of the deceased on the outer portion where wind pipe was present. The doctor has opined that these two injuries were grievous and fatal for life. The manner in which the accused throttled Basanti Bai even after having intercourse which was resisted by Basanti Bai suggests that the accused was bent upon to finish Basanti Bai, therefore, the continous conduct of the accused with earlier two wives and the deceased Basanti Bai as also looking to the nature of neck injuries and the manner in which the accused pressed the neck of the deceased suggest that the accused intended in all probability to cause death of Basanti Bai, therefore, we are of the considered opinion that the trial Court has rightly convicted the accused in the commission of offence under Section 302 of I.P.C. We do not find any illegality or infirmity in the impugned award as such, the appeal is liable to be dismissed and is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge